

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of D.R. LEVIN, Minor.

UNPUBLISHED
December 26, 2013

No. 316558
Wayne Circuit Court
Family Division
LC No. 11-503024-NA

Before: BOONSTRA, P.J., and DONOFRIO and BECKERING, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to the minor child. The trial court found that there was clear and convincing evidence to terminate her parental rights under MCL 712A.19b(3)(c)(i), (g), and (j) and that termination was in the minor child's best interests. We affirm.

I. STATUTORY GROUNDS FOR TERMINATION

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b has been proven by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000); *In re Fried*, 266 Mich App 535, 540-541; 702 NW2d 192 (2005). We review for clear error the trial court's findings on appeal from an order terminating parental rights. *In re Trejo*, 462 Mich at 356-357; see also MCR 3.977(K). A finding is clearly erroneous when, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). Deference is given to the trial court's assessment of the credibility of the witnesses. *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991).

In the instant case, the trial court found that three statutory grounds for termination had been proven by clear and convincing evidence based on MCL 712A.19b(3)(c)(i), (g), and (j). Respondent contends that the trial court's findings with respect to each of these grounds are clearly erroneous. We disagree.

A. MCL 712A.19b(3)(c)(i)

MCL 712A.19b(3)(c)(i) provides that a parent's parental rights may be terminated if the court finds by clear and convincing evidence that "[t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age."

Here, one of the conditions that led to the initial adjudication was that respondent lacked adequate housing for the child as well as an adequate custodial plan for the child. Although respondent is apparently hopeful that she can move into an apartment and live independently, she still resides in an adult foster care home, a place where the child cannot reside. Although respondent may be closer to moving into an independent apartment, she has not yet done so, nor does she have firm plans to do so. See, generally, *In re Trejo*, 462 Mich at 358-360 (finding that the respondent failed to rectify the conditions that led to the initial adjudication because, at the time of the decision, the respondent continued to lack adequate housing for the child despite being on a waiting list for an apartment). Thus, the lack of adequate housing for the child has not been rectified. Additionally, respondent has not offered, even on appeal, that an adequate custodial plan for the child exists. Further, she has not addressed on appeal any of the other conditions that led to the adjudication. The court's adjudication was based on respondent's "mental health issues and the child being without a proper guardianship due to abandonment."

Respondent also does not argue that her mental and cognitive impairments have substantially improved since the time of the initial adjudication on February 2, 2012. Although Eula Edwards and Debra Kailie testified that they believed respondent is able to care for the child, there was overwhelming evidence showing that respondent has not rectified the conditions that led to the adjudication. Kimberly Redlin and Susan Clark both testified that, based on their experience with respondent, she is unable to provide an adequate custodial plan for the child. Redlin stated that respondent's continued reliance on a guardian and residence in an adult foster home will not allow her and the child to independently live together in the "near future." Clark stated that, based on respondent's cognitive assessment, she will continue to be unable to manage her own affairs, and her IQ will not ever move up more than a few points. Respondent's brief on appeal does not explain how any of the conditions that led to the adjudication have been rectified. Accordingly, she has not demonstrated that the trial court, with its special opportunity to observe the witnesses in court, clearly erred by finding that MCL 712A.19b(3)(c)(i) was established by clear and convincing evidence.

B. MCL 712A.19b(3)(g)

MCL 712A.19b(3)(g) provides that a parent's parental rights may be terminated if the court finds by clear and convincing evidence that "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age."

Here, it was not clearly erroneous for the court to find that respondent failed to provide proper care and custody for the minor child and that there is no reasonable expectation that respondent will be able to do so within a reasonable time considering the child's age. Respondent has not provided care to or lived with the child or her other children since 2008, when she was put under a legal guardianship. She continues to reside in an adult foster home facility, where she is provided with meals, laundry, medication, and transportation services. Further, respondent has no firm plans to move into an independent apartment, and Redlin and Clark both testified that they do not believe she is prepared to live independently or to care for children. Considering respondent's cognitive and mental impairments, she has failed to

demonstrate any ability to provide care for the child's ADHD, oppositional defiant disorder, mood disorder, and phonological disorder.

Respondent notes that Edwards testified to her participation in parenting and cooking classes and that Edwards believed respondent's progress is on the upswing. However, it has not been demonstrated that respondent has benefitted sufficiently from her service plan to be able to provide proper care for the child. See, generally, *In re Frey*, 297 Mich App 242, 247-248; 824 NW2d 569 (2012) (stating that where a court institutes a service plan for a legal parent as part of termination proceedings, there is not only a requirement that the parent physically complete all requirements of that plan, but the parent also must demonstrate that he or she has sufficiently benefitted from that service plan). Even if respondent is on the "upswing," she still lacks adequate housing for the child and is, to this point, unable to cook, do laundry, address an envelope, make simple change from a purchase, or use public bus systems for transportation. Respondent cites *In re Boursaw*, 239 Mich App 161, 176-177; 607 NW2d 408 (1999), to support the proposition that a parent's improvement in mental health therapy can prevent termination of parental rights if the parent is likely to assume full parental responsibilities after continued counseling. However, respondent does not argue that she is likely to assume full parental responsibilities after continued counseling and therapy; respondent is unlikely to overcome her mental and cognitive impairments to the extent that she can provide proper care for the child.

The trial court had the special opportunity to view the witnesses in court and came to the conclusion that, even with continued therapy, it was unlikely that respondent would be able to provide proper care or custody for the child. Specifically, the court found that because respondent has required adult foster care and guardianship services and there is no evidence to show that respondent's condition will improve significantly in the foreseeable future, respondent's future potential to provide proper care for the child is minimal. Respondent has not established that the trial court's conclusion is clearly erroneous.

C. MCL 712A.19b(3)(j)

MCL 712A.19b(3)(j) provides that a parent's parental rights may be terminated if the court finds by clear and convincing evidence that "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent."

Here, the trial court found that the evidence clearly showed that the child would be neglected and at significant risk to his health and safety in the long-term future if placed in respondent's care. Respondent has struggled with mental and cognitive impairment to the extent that she has been placed in a guardianship since 2008. She does not currently have firm plans to move to an apartment or other residence that can accommodate the child. Further, if the child were placed in respondent's care, he would be dependent upon a person who is unable to cook, do laundry, use public transportation, address an envelope, or count change from a purchase. Respondent has not identified a custodial plan or an ability to care for the child's special needs relating to his ADHD, mood disorder, oppositional defiant disorder, and phonological disorder. The trial court also noted that the child is currently placed with a nonrelative foster care provider who is "meeting his significant mental and emotional health needs and the child is happy and thriving in this environment." In respondent's brief on appeal, there are no cogent arguments

addressing the risks to the child's safety if he were to be placed in respondent's care. Respondent does note that she has never actively harmed the child, but that is not the sole test under MCL 712A.19b(3)(j). Rather, the statute provides that there is "a reasonable likelihood" that the child "will be" harmed if returned to respondent. Respondent has failed to demonstrate that the trial court's findings were clearly erroneous.

II. BEST INTERESTS

Respondent contends that termination of her parental rights was not in the child's best interests. Specifically, she argues that the court should have considered her best interests, as well as her bond with the child, parenting skills, housing, and her capacity to be a good mother to the child. She contends that the trial court would not have terminated her parental rights had it considered these factors. We disagree.

"[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). We review a trial court's findings regarding a child's best interests for clear error. *In re Trejo*, 462 Mich at 356-357.

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). In considering whether termination is in a child's best interests, the court may consider a child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home. *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). The best interests of the parent are not a consideration. *In re Moss*, 301 Mich App at 87-88.

The court's conclusion that termination of respondent's parental rights is in the child's best interests was supported by a preponderance of the evidence. Although the child and respondent share a bond, as noted above, respondent lacks virtually every skill and ability necessary to provide proper parental care to him. Indeed, their roles are reversed during their visits—the child acts as a comforting figure to his mother, sometimes even helping her to eat snacks. The child has a special need for stability and permanency because of his ADHD, mood disorder, oppositional defiant disorder, and phonological disorder. Importantly, he is currently receiving that special care with his foster care provider. Respondent continues to reside in an adult foster home facility, an environment inappropriate for the child. As noted above, respondent continues to struggle with her mental and cognitive impairments and has not demonstrated that she possesses the capacity to act as a parent in the child's life. Accordingly, the trial court's finding that termination of respondent's parental rights was in the child's best interest was not clearly erroneous and was proved by a preponderance of the evidence.

Affirmed.

/s/ Mark T. Boonstra
/s/ Pat M. Donofrio
/s/ Jane M. Beckering